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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,652	01/13/2004	Blake Cumbers	087620.000010	3926

29747 7590 06/29/2007
GREENBERG TRAUIG
3773 HOWARD HUGHES PARKWAY
SUITE 500 NORTH
LAS VEGAS, NV 89169

EXAMINER

SAGER, MARK ALAN

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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06/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/757,652	Applicant(s) CUMBERS, BLAKE	
	Examiner M. A. Sager	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2007 and 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 10-15 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-15, 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Double Patenting

1. Claims 1-5, 10-15 and 20-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6142876 in view of Franchi (5770533). This holding is maintained from prior action and reiterated herein. With respect to application '652, Cumbers '876 essentially claims invention of instant '652 application where '876 claim steps or features that further limits invention, but patentability did not lie within and thus by omitting those steps or features, a broader form of invention is provided that maintains the patentable steps/features and secures a broader form of invention. For instance, the steps/features pertaining to entry of a player identification data claimed in '876 and '900 further limits the form of invention, but patentability was not contained therein; thus, by omitting the claim language pertaining to entry of player identification data a broader form of invention is secured. Also, '652 claims system/machine of Cumbers' '876 method. It would have been obvious to an artisan to claim the system/machine of Cumbers' '876 method in order to protect that form of invention. Further regarding '652, player tracking at table games was by OFFICIAL NOTICE notoriously well known in use similarly to player tracking at gaming machines prior to '652 claimed invention, as evidenced at least by Applicants statements of prior art (sic) and further evidence by Franchi. For instance, there existed player tracking of a wagering game for table games and for game machines since some players prefer social play as permitted at table games such as poker, baccarat, or blackjack or twenty-one, etc., while other players prefer solitary play at game machines such as video poker, video blackjack (which includes reel machine). Further, a wagering game or a gaming machine may include a [gaming] table as consistent/conventional with the use of the language within the art. Therefore, it would have

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been obvious to an artisan at a time prior to the '652 claimed invention to add 'table' as claimed, as stated by Applicants as known, as further evidenced by Franchi to Cumbers' 876 system and method so as to increase security of who is being tracked for players who prefer social play at a table game like poker, baccarat or blackjack. The biometric data increases security of who is being tracked over card identification systems that is inherent/germane to biometric verification systems. Essentially, the form of wagering game (table vs. solitary/solo game machine) does not patentably distinguish over Cumbers' method and system in light of player tracking accepted at both forms of play.

Response to Arguments

2. Applicant's arguments filed April 24, 2007 and Feb. 20, 2007 have been fully considered but they are not persuasive. Within Notice of Non-Responsive Amendment mailed 3/15/07, Applicant was notified the office determined that the reply rec'd Feb 2, 2007 contained a serious omission, as per MPEP 714.03, for failing to respond to all rejections to include presenting arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references per 37 CFR 1.111; however response mailed April 24, 2007 and Feb 20, 2007 continue to fail to address all issues. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of 37 CFR 1.111. In this case, the cited replies present a general allegation of patentability and no arguments regarding either error of judicially created obviousness double patenting holding or specifically pointing out how the language of the claims patentably distinguishes over applied references (parent and grand-parent patents) in judicially created

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double patenting holding or submission of a terminal disclaimer with respect to judicially created obviousness double patenting holding over 6142876 in view of Franchi (5770533) discussed in paragraph 4 of action mailed November 2, 2006. It is especially evident as to applicability of judicially created double patenting holding when the feature of creating a new data file when biometric data is not verified is feature upon which Cumbers 6142876 patent was granted (note claim 1 therein, creating doe memory file when no match occurs), but yet no remark was presented by Applicant regarding holding over 6142876 in view of Franchi. It is noted that filed claims appear to have been better suited to a reissue application since they appear to be a broadening of priorclaimed invention and Applicant is entitled to one patent for one invention.

Conclusion

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

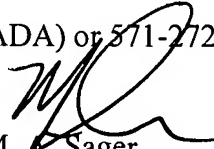
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



M. A. Sager
Primary Examiner
Art Unit 3714

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